IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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L.P.A. No.109 of 2005

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J.R. Singla ...Appellant through
Mr.D.S.Patwalia, Advocate

Vs.

State of Punjab and others ....Respondents through
Mr. Sanjiv Sharma, Addl.A.G.
Punjab.

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN,
CHIEF JUSTICE.
HON'BLE MR.JUSTICE RAJIVE BHALLA

1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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RAJIVE BHALLA, J

By way of this order, we propose to dispose of LPA Nos.109 and 128 of 2005. The facts have been extracted from L.P.A. No.109 of 2005.

Challenge in these appeals, is to the order of the learned Single Judge declining relief of alteration of date of birth. The sole question that arises for consideration in these appeals is, whether the appellants were entitled to the issuance of a writ, directing the respondents, to alter their

date of birth in their service books, in accordance with the notification dated 21.6.1994.

The appellant joined service in the department of Excise and Taxation as a Clerk in 1973. He was thereafter directly recruited as Assistant in 1980 and thereafter promoted as Superintendent in 1988. In the year 1990, he was promoted to the post of Excise and Taxation Officer. While joining service in 1973 and 1980, the appellant, recorded his date of birth as 20.8.1947. An entry to that effect was made in the service book.

The State of Punjab, issued a notification dated 21.6.1994, incorporating an amendment in the Punjab Civil Services Rules, Volume-I, Part-I,thereby substituting Note 3(A) below Rule 2.5. As per the unamended note, the date of birth was required to be recorded in the service record. It was also stipulated that once a date of birth was recorded, it could not be altered except in case of a clerical error and that too with the prior approval of the Government. Note 3 stipulates that the date of birth, disclosed by an employee, would be final and no change would be permitted. The amendment, however, granted a period of two years on 21.6.1994 to an employee, to apply for change of date of birth, on the basis of conclusive documentary evidence, such as matriculation certificate or Municipal birth certificate etc. The Government, thereafter, issued instructions dated 18.1.1995, laying down the procedure for change in date of birth. An enquiry was envisaged, by the Commissioner of Enquiries, before arriving at a decision with respect to the change of date of birth. It was also stipulated that the date of birth could only be changed after obtaining approval from the Finance Department.

The petitioner, apparently filed an application dated

22.5.1995 to the Excise and Taxation Commissioner, Punjab, Patiala, for effecting a change in his date of birth. The appellant alleges that he was advised to get his date of birth altered in the matriculation certificate first. The appellant, thereafter, wrote to the Registrar, Panjab University,Chandigarh, for effecting a change in his date of birth. Vide letter dated 26.2.1998, the University communicated change of date of birth from 20.8.1947 to 20.8.1948 and a duplicate certificate was issued. The appellant, applied for change of date of birth on 4.3.1998. Eventually, after obtaining authentication of certificate and following the procedure prescribed, the appellant's application was rejected. Aggrieved thereafter, the appellant preferred a writ petition, which was dismissed by the learned Single Judge, vide order dated 31.5.2005.

The sole contention urged by counsel for the appellant is that the learned Single Judge erred in ignoring the instructions, issued by the State of Punjab, permitting its employees, to seek alteration of date of birth within two years from 21.6.1994. It is contended that the instructions issued by the Government, were binding upon the respondents and, therefore, should have been honoured by altering the appellant's date of birth. It is further argued that the judgements, referred to by the learned Single Judge, primarily pertain to cases, where the rules did not confer a right, to seek alteration of the date of birth and, therefore, the Hon'ble Supreme Court, rightly held that the date of birth could not be altered. However, as the State of Punjab issued instructions, permitting change of date of birth, the present appeal should be accepted, the order of the learned Single Judge should be set aside and the respondents be directed, to effect an alteration in the date of birth of the appellant.

It will be necessary to notice and as conceded by counsel for the appellant, the appellant has since retired from Government service.

Counsel for the respondents, on the other hand, states that the judgement of the learned Single Judge is legal and valid and does not suffer from any error of law or jurisdiction. It is argued that the learned Single Judge, rightly held that the appellant was not entitled, to seek alteration of his date of birth. Even otherwise, the complete application filed by the appellant was after a period of two years prescribed by the instructions and, therefore, even on facts, the appellant is not entitled to any relief.

We have heard learned counsel for the parties and perused the paper book.

An employee enters service, based upon prescribed qualifications, which include the prescribed date of birth. After entering service,seniority in certain situations, is determined by the age disclosed by an employee. The date he joins service, his career stands charted out in accordance with the rules and regulations that govern his service. His right to promotion and all other attendant circumstances, subject to imponderables stand crystalised. To permit change of date of birth, at a belated stage in service, would alter this situation. His seniority and consequently his promotion etc., as also of his colleagues would also be affected. As held by Hon'ble the Supreme Court in **Secretary and Commissioner, Home Department and others V. R. Kirubakaran,** 1994 Supp.(1) SCC 155, correction of a date of birth of a public servant sets into motion a chain reaction causing havoc amongst colleagues, those who are juniors and seniors. Correction in a date of birth, would affect other public servants, as regards seniority and promotion, against which affected employees would have no right of

redress. This reasoning led to a series of judgements by Hon'ble the Supreme Court, commenting adversely upon the practice of alteration of date of birth, during service. Some of the judgements may be referred to namely; **Union of India V. Harnam Singh** 1993(2) Supreme Court Cases 162 and **Cement Corporation of India Ltd. V. Raghbir Singh and another** 2002(9) Supreme Court Cases 398. The learned Single Judge, upon a consideration of the law, as enunciated in the aforementioned judgements, in our considered opinion, rightly dismissed the writ petition. Contention of counsel for the appellant that in the year 1994, the State of Punjab introduced Note 3-A, appended to Rule 2.5 of the Punjab Civil Services Rules Vol.1 Part I, granting a period of two years to every government employee, to seek rectification of his date of birth, conferred a right upon the appellant, to seek alteration in his date of birth, cannot be accepted, in view of the legal position, as noticed by the learned Single Judge and as referred to herein above as also by the learned Single Judge while commenting adversely upon the note and the amendment to the rules, rightly held that the rules did not take into consideration the law as enunciated by the Hon'ble Supreme Court . We find no ground to interfere with the judgement, whether on law or facts.

It would also be necessary to notice here that the learned Single Judge dealt with the matter on merits and recorded a finding that the appellant's application, filed in 1995 was incomplete. The complete application was filed in the year 1998 i.e. after the period prescribed in the rules had expired. Thus, even if the rules are said to confer a statutory right, to seek alteration of date of birth, the period prescribed in the rules having expired, the appellant had no subsisting right, to seek alteration of his date of birth.

The respondents rightly dismissed the appellant's application and the learned Single Judge rightly dismissed the writ petition.

In view of what has been noticed above, as the present appeal lacks merit, we dismiss the same with no other as to costs.

06.3.2007 (RAJIVE BHALLA)
GS JUDGE

(VIJENDER JAIN)
CHIEF JUSTICE